

REMARKS/ARGUMENTS

The Examiner is thanked for their review of the application.

In the specification, the paragraphs at page 1 beginning at lines 11 and 16, and page 2 beginning at lines 1 and 6, have been amended to include the serial numbers of the four co-pending and concurrently filed applications.

In the Abstract, the Examiner has stated that it "is objected to because the abstract contains more than 150 words." The paragraphs 6, 9, 13 on page 126 have been amended and are now believed to be compliant.

Claims 1-4 remain in this application. Claims 1-4 were elected in response to a Restriction Requirement made by telephone on November 16, 2004 by the Examiner Patel. Claims 1-4 have been amended. Claims 5, 6 have been canceled without prejudice or disclaimer of the subject matter therein.

The Examiner has stated "Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention."

Regarding Claim 1, the Examiner stated that it "fails to functionally relate the method steps of 'receiving a plurality of demand coefficients' and 'receiving cost data' with the 'determining a preferred set of prices' step. In other words the determining step is performed independent of the receiving steps. Claim 1 is also rendered indefinite due to unclear recitation which reads 'that will provided a local optimum' because no clear connection can be made as to what the 'local optimum' refers to. Also note that the determining set fails to positively recite the local optimum as a property or attribute of the 'preferred set of prices' which is determined. Therefore, no patentable weight is accorded to the term local optimum presented in the current form."

Claim 1 has been amended to recite “using the plurality of demand coefficients and the cost data to determine a preferred set of prices for the plurality of products prices for the plurality of products that will provide a local optimum for the preferred set of prices” (emphasis added) and is now in compliance with 35 U.S.C. 112.

Regarding Claim 2 the Examiner has stated that it “also contain similar deficiencies. For example,

--limitation ‘the finding the set of prices’ lack antecedent basis,

--limitation ‘using a grid method to determine.’ does not functionally relate to any other method step of the claim.

--limitation, ‘using a grid method to determine.’ refers to determining the preferred set of prices. This step is redundant to the ‘determining’ step of parent claim 1.”

Claim 2 has been amended and now recites “determination of the preferred set of prices”. In addition, “using a grid method” has been deleted without prejudice from Claim 2. Applicants believe Claim 2 now complies with 35 U.S.C. 112.

Regarding Claim 3 the Examiner has stated that it “also contain similar deficiencies. For example, it refers to the limitation ‘the finding the set of prices’ lack antecedent basis in any parent claim. The aforementioned claims are also rendered indefinite because they fail to correlate the step of ‘generating a profit model’ to ‘preferred set of prices’ recited in the claims 1 and 2.”

Amended Claim 3 now recites “determination of the preferred set of prices further comprises ... generating a profit model from the sales model and the cost model, wherein the preferred set of prices is a local optimum of the profit model” (emphasis added). Hence, Claim 3 is now compliant with 35 U.S.C. 112.

Regarding Claim 4 the Examiner has stated that it “contains similar deficiencies. For example, the limitations ‘the sales model’ and ‘the cost model’ are not recited in claim 2. It is assumed that this is a typographic error.” Accordingly, Claim 4 has been amended to recite “The method, as recited in claim 3 ... until the local optimum for the set of preferred prices is reached” and is in compliance with 35 U.S.C. 112.

The Examiner has also stated that "Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter." The Examiner further states that "in the present application, Claims 1-4 have no connection to the technological arts. None of the steps indicate any connection to a computer or technology. The steps of receiving, and determining are broadly interpreted as manual steps. Therefore, the claims are directed towards non-statutory subject matter, i.e. not within technological arts. To overcome this rejection the Examiner recommends that Applicant amend the claims to better clarify which of the steps are being performed within the technological arts, such as using a digital computing device."

Independent Claim 1 now recites a "computer-implemented method for determining a preferred set of prices for a plurality of products, comprising ..." (emphasis added). Applicants believe that independent Claim 1 and dependent Claims 2-4 are now in compliance with U.S.C. 101.

The Examiner has rejected Claims 1-4 under U.S.C. 102(e) as being "anticipated by Ouimet et al. (6,094,691) (Ouimet)", and further states as "per claims 1-4 Ouimet discloses a method for determining a preferred set of prices for a plurality of products based on plurality of demand coefficients and cost data (see Figures 1 and col. 3-6). Ouimet also inherently teaches generating sales model and cost model (refer to demand models, referred to in col. 4-6)." Applicants assume that "Ouimet et al. (6,094,691)" is a typo and that the Examiner is referring to Ouimet 6,094,641.

Independent Claim 1 has been amended to include "cost data including activity-based costs... and wherein the local optimum for the preferred set of prices maximizes profit" (emphasis added). Support for 'activity-based costs' can be found in the specification at, for example, page 75, line 19 to page 76 line 3, "the preferred embodiment of the invention, the financial model engine 108 comprises an activity-based costing module ... [which] computes variable and fixed costs for products at specific store locations". This invention is advantageous because by using "these estimations, costs may be more easily calculated on a store level ... [and] allows the maximization of profits for each store" (emphasis added) (see page 75, lines 18-19 of the specification as filed).

Since the cited reference Ouimet '641 does not teach nor suggest the use of activity-based costs to determine a local optimum for the preferred set of prices which maximize profit, Applicants believe that independent Claim 1 is now allowable. Applicants further submit that dependent Claims 2-4 which depend from Claim 1 are also patentable for the same reason due to their dependence from Claim 1.

Claim 3 has also been amended to recite "generating a cost model from the cost data, and wherein the activity-based costs include variable costs and fixed costs" (emphasis added). Support can be found in the specification on page 74, line 22 to page 75, line 3, which states "The financial model engine 108 should be flexible enough to provide a cost model for different procedures. These different costs may have variable cost components where the cost of an item is a function of the amount of sales of the item and fixed cost components where the cost of an item is not a function of the amount of sales of the item" (emphasis added)). For example, in one embodiment of the invention, "the stores may only need to supply labor costs of the stores and distribution centers, cost of capital, size of an item and number of items in a case to allow a cost modeling" (see page 75, lines 9-12 of the specification).

Hence, in addition to the reasons discussed above for base Claim 1, dependent Claim 3 is also patentable over Ouimet '641 because the cited reference does not teach a cost model which uses activity-based costs, including variable costs and fixed costs, to determine a local optimum for the preferred set of prices which maximize profit.

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In sum, Claims 1-4 have been amended. Claims 5, 6 have been canceled without prejudice or disclaimer of the subject matter therein. Applicants believe that all pending claims 1-4 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner. The commissioner is authorized to charge any fees that may be due to our Deposit Account No. 50-2766 (Order No. DEM1P005). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

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Respectfully submitted,



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